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**THE REGULATION OF CONSUMER
CREDIT TRANSACTIONS**

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THE REGULATION OF CONSUMER CREDIT TRANSACTIONS IN MALAYSIA

by

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"... [t]hou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent; unto a stranger thou mayest lend upon usury".

The Bible: Exodus xxii, 25

"... [t]hey who devour usury shall not rise from the dead but as he who ariseth whom Satan hath infected by touch...".

Koran, ii, 275, 276.

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INTRODUCTION

It was a landmark year for the consumer movement in 1992 because for the first time the Malaysian Government celebrated World Consumer Rights Day on 15 March.¹ However the consumers have been celebrating World Consumer Rights Day since 15 March 1983 through programmes organised by the consumer movement throughout the country.

The World Consumer Rights Day is aimed at strengthening the solidarity of the consumer movement and enhancing public consciousness of their rights as consumers. John F. Kennedy, who made the Consumer Rights Declaration for the American people declared consumer rights as:

- the right to seek security
- the right to seek information
- the right of choice
- the right to be heard.

A. Aims and Objectives

The emphasis of this paper would be on the consumer's right to seek information and the right of choice and in this regard, to explore the existing regulations governing consumer credit transactions in Malaysia. It is not intended to be an exhaustive study of the legislative provisions governing each type of consumer credit transaction although the Hire Purchase Act 1967 is dealt with in some detail. The paper is divided into three parts:

Part One deals with specific consumer credit transactions which are governed by legislation e.g. hire-purchase, moneylending and pawnbroking.

Part Two looks at the other forms of consumer credit transactions which do not come under the protection of any particular statute except the Contracts Act 1950 (Revised 1974) and Sale of Goods Act 1957 (Revised 1989).²

¹ See report entitled "A day to strengthen consumer solidarity" in The New Straits Times Press, 15 March 1993.

² For a comprehensive list of the various forms of consumer credit in use see S. Sothi Rachagan, Consumer Law Reform - A Report, University of Malaya Press, 1992, p.74. The list includes Leasing, Credit Sale, Conditional Sale, Finance Company Personal Loans, Budget Accounts, Option Accounts, Catalogue Mail Order, Bank Overdraft, Bank -

Part Three attempts a rationalisation of credit laws arising from the first two parts.

The main aim is to highlight the deficiencies in the various piecemeal legislation governing consumer credit transactions in Malaysia as well as to discuss the transactions which do not appear to be governed by any specific legislation except the general law of contracts and to suggest that a general regulation of credit transactions would be welcome. Specific provisions where disputes commonly arise would be focussed on and the deficiencies pointed out.

B. Scope of Discussion

There are different types of consumer credit, the more common forms being:

- moneylending transactions
- pawnbroking
- hire-purchase

Each of these areas will be discussed in relation to existing legislative provisions and effectiveness of such regulations. However, this paper would not address the issues in a comprehensive manner. Significant loopholes however will be highlighted and recommendations for improvements, suggested.

Hire-purchase transactions are getting popular. Therefore the law relating to hire-purchase would take the major portion of discussion in this paper.

However, these three areas of consumer credit do not provide the only forms of credit facilities available to the consumer. Other forms of credit are increasingly being used by the consumer and are discussed briefly in Part Two.

The protection of the consumer who is entangled in the trap of credit transactions ought to be the guiding factor in the quest for consumer credit regulation and in this paper, specific provisions which could be beneficial to the consumer would be explored.

C. General overview of consumer credit

The history of consumer credit may be traced back to early medieval times when such advances for interest were termed as usury.

Ordinary Loan, Bank - Personal Loan, Insurance Policy Loan, Mortgage, Second Mortgages and Credit Cooperatives.

Usury, the loan of money in return for payment of interest was the subject of widespread prejudice and in certain religious sectors, considered sinful. The prejudice against usury arose out of the following factors:

- it was wrong for a person to profit from the necessity of another; and
- usury is contrary to the normal use of money, which is primarily for exchange purposes and to use money to generate wealth was a perversion of its institution.³

The history of usury and its unpopularity could not withstand the development process and the growing needs of the consumer. Various methods were devised to overcome the stigma of lending for interest and the birth of "acceptable" credit transactions was seen. Usury was frowned upon but not the practice where goods were sold at a price higher than the cash price. There was a growing need to move away from the prohibition against usury and instead allow the consumer to possess the material items that he needed to enjoy a more affluent lifestyle. Thus the need for regulation.

E. Consumer Credit Today

Consumer credit may be defined as financial assistance given to an individual to help him make a purchase which he could not otherwise afford. The ingredients of credit may be defined as:

- the supply of a benefit
- attracting a contractual duty of payment
- in money
- the duty to pay being contractually deferred after payment has been earned
- such deferment being granted for the purpose of providing financial accommodation.⁴

In other words, credit may be stated as:

- an obligation or promise to repay within a stipulated time together with
- payment of interest – interest may be defined as "money paid for use of money lent or for not exacting repayment of debt".⁵

³ See Duggan, Begg and Lanyon, Regulated Credit. The Credit and Security Aspects, The Law Book Company Limited, 1989, p. 3.

⁴ See R M Goode, Consumer Credit Law, Butterworths, London, 1989, p. 106.

⁵ As defined in The Concise Oxford Dictionary of Current English.

Credit has always been characterised by a distinction between vendor credit and lender credit.⁶

- (a) **Vendor credit** – where the vendor of the goods allows the purchaser to pay for the goods bought over a period of time (instalments);
- (b) **Lender credit** – where cash is advanced to a person requiring credit.

F. Need for regulation of consumer credit transactions

The primary objective for the regulation of consumer credit in any country is twofold – to encourage rational credit purchase transactions and to ensure that both the consumer and traders are getting a fair deal out of the transaction.

There is an urgent need to regulate consumer credit in a more stringent manner than is presently evident. We are now living in a credit controlled society and non-regulation or insufficient consumer credit regulation may lead to inflation in the country or pecuniary ruin for the individual consumer. The "impulsive purchase" made by the normal consumer which is made easier due to credit facilities available spell a severe setback in the financial commitments of an unsuspecting individual.

Clear and precise guidelines regulating consumer credit in general is necessary and timely. There is a need for a law governing all credit agreements in addition to specific provisions which may be relevant for particular transactions.

Piecemeal legislation governing certain types of consumer transactions are far from adequate.⁷

⁶ See Lee Chin Yen, The Law of Consumer Credit: Consumer Credit and Security over Personalty in Singapore, Singapore University Press, 1980, p.25 ff.

⁷ In Peninsular Malaysia, there are three statutes generally referred to as consumer credit acts. These are the Moneylenders Act 1951 (Revised 1989) Act 400 Laws of Malaysia ("the MA 1951"); the Hire Purchase Act 1967 (Revised 1978) Act 212 Laws of Malaysia ("the HPA 1967") and the Pawnbrokers Act 1972 Act 81 Laws of Malaysia ("PA 1972") and the corresponding regulations to this Act. These are not the the only statutes. Other acts which also govern consumer credit transactions are the Banking and Financial Institutions Act 1989; the Islamic Banking Act 1983; the Insurance Act 1963; the Takaful Act 1963 and the Cooperative Societies Act 1948. See Rachagan, op. cit. pp. 80-81.

Not all transactions would be exhaustively governed by the separate pieces of legislation and in addition, certain transactions may be either not included in the corresponding act or expressly excluded.

For instance, section 2A(1) of the Moneylending Act 1951 expressly prohibits the operation of the Act to certain bodies and persons. Section 2A(2) further extends the non-applicability of the Act in that it allows the Minister to exempt a company or a society from the provisions of this Act if special considerations warrant it. As to what those special considerations may be, the Act is silent. Leaving matters such as special considerations undefined might not augur well for the consumer.

To note also the doctrine of caveat emptor (let the buyer beware) which has been the guiding principle in sale and purchase transactions.⁸ The burden is upon the buyer to satisfy himself that the goods are of merchantable quality or that they are suited for the purpose of purchase. This poses yet another problem where most consumer goods sold today are incapable of inspection because they are in sealed containers which do not allow for inspection or even if the consumer were to inspect them, defects may not be visible to the naked or uninformed eye.

The consumer has to rely on assurances of sales personnel or accuracy of advertisements upon which the purchase is concluded. Once the sale is concluded, a valid contract comes into existence. A contract which has been freely entered into by two or more consenting parties. A contract which even the courts may be hesitant to rewrite the terms.⁹

Having seen some negative aspects of consumer transactions, one wonders why consumers are attracted to credit transactions.

G. Lure of credit transactions

Undoubtedly, the best form of purchase is the cash purchase. It is a prudent and safe measure of purchase because if one does not have the requisite amount of cash, the purchase is not made. On the other hand ample and attractive credit facilities prove irresistible to the inevitable purchaser. Whether these credit facilities pose advantages both for the consumer and the vendor/lender or disadvantages remains to be seen. Briefly some advantages and disadvantages may be as follows:

⁸ The common law principle of "caveat emptor" or "let the buyer beware" has been watered down considerably in the light of the increased awareness of consumer rights and protection internationally. The emergence of Consumer Protection Acts in various countries is proof that consumer rights are receiving more attention than in previous decades.

⁹ "The Chancery mends no man's bargain", (Lord Nottingham in Maynard v Moseley (1676) 3 Swan 651.

- (a) **Affluent lifestyle** – purchases made on credit allow a person to live beyond what his actual salary would entitle him to purchase. Upon payment of a minimum deposit, the consumer takes home the product of his choice and is obliged to make regular monthly payments.

Disadvantage: A consumer may be led into making far too many purchases above his subsistence level. He may then be faced with making hefty monthly instalments – leading him into debt-stricken circumstances. He would then be in another trap – to borrow money in order to meet the monthly instalments.

- (b) **Surplus cash** – a consumer who buys a product on credit has ready cash available for emergencies. This would be especially useful where the cash comes in handy for unforeseen liabilities.

Disadvantage – the willpower may not always allow the consumer to leave the cash untouched. The lure of consumer credit may prove too strong and he may be led into making more purchases using the ready money available for down-payment or deposit.

- (c) **Ready turnover of goods** – In the manufacturing industry, consumer credit spells faster turnover of goods because of the market of ready purchasers. At first glance this would appear to be a distinct uptrend for the economy. More goods would be in demand, thereby creating more job opportunities. Unemployment would be reduced. There would be a boom in the country.

Disadvantage: The above pattern would be the ideal setting for increased inflation because of the artificial boom in the economy. Inflation – because the consumer would be buying goods for the sake of buying. Credit facilities extended for almost all types of goods would prove irresistible to the man in the street. When the consumer walks into the trap of buying for the sake of buying, then the problem of payment surfaces. Goods bought but not paid for may be repossessed.

As long as the consumer makes his credit payments, one does not envisage any problem. When he does not pay, then the problems surface one by one. The purpose of this paper is to look at the types of consumer credit popular in this country and to look at regulations, if any, governing each type of transaction. Whether the regulations are sufficient, too loosely worded, having all embracing clauses which do not embrace the consumer, too vaguely formulated – all these and subsidiary issues would be dealt with.

PART ONE - CONSUMER CREDIT TRANSACTIONS GOVERNED BY LEGISLATION

A. THE MONEYLENDERS ACT 1951 (Revised 1989) Laws of Malaysia, Act 400 ("the Act").

Moneylending transactions have been in existence long before the Act came into existence. However, a need for regulation of moneylending transactions was felt in order to discourage credit habits. Interest being charged by the moneylenders was excessive and the consumer had no choice but to accept the exorbitant rates because of his desperate need for money. The Act came into force on 31 March 1952.

(a) Scope of the Act

Persons carrying on the business of moneylending are governed under the provisions of the Act. But it does not apply to cooperative societies, banks and merchant banks, insurance companies, pawnbrokers and any person bonafide carrying on any business where the primary object of the business is not the lending of money.¹⁰

Further the Minister may exempt certain companies or societies from the provisions of this Act subject to special considerations. The "special considerations" are not specified thus leaving an undefined exemption provision.¹¹

The Act appears to be a regulatory enactment in that it provides for the strict regulation of those in the business of moneylending. This is beneficial for the consumer because of the stringent licensing and operating requirements imposed by the Act. On the other hand, too wide a net appears to have been cast leaving a lot to be decided on common law principles.

(b) Requirements of a moneylender

A moneylender in Malaysia is subject to the following provisions:

- must be licensed, and the licence is to be renewed annually¹²
- every licence granted shall show his true name and business name as well as the

¹⁰ Section 2A.

¹¹ The effect of this is that these exempted bodies or corporations are governed by the Contracts Act 1950 (Rev. 1974). Unconscionable terms are imposed by these corporations upon the borrower who is unable to bargain due to his position.

¹² Section 5.

- address under which he carries out his business¹³
- penalty for offences committed under the Act
- the fact that the licence may be refused subject to stipulated grounds¹⁴
- suspension and forfeiture of licence if the person is convicted of any offence under this Act
- shall not advertise in such a manner that his name is not conspicuous
- shall not do anything which might be construed that he was in the business of banking
- shall not advertise his moneylending business, directly or indirectly
- note or memorandum of moneylenders' contract to be given to the borrower¹⁵ and the particulars to be contained therein are the date of the loan, the principal and the rate of interest per annum
- shall not charge compound interest¹⁶
- ensure that the amount of interest to be charged shall not be more than 12 per centum per annum for a secured loan or 18 per centum per annum for an unsecured loan¹⁷
- ensure that calculation of interest shall be according to the provisions of the Act and the Second Schedule to the Act¹⁸
- it shall be an offence for a moneylender who makes a note or memorandum to do so inaccurately or to make such in blank form¹⁹.

The above provisions are beneficial to the consumer because of the strict regulations and onerous obligations imposed on the business of moneylending. Especially the licensing requirement which ensures that any offender would be regulated by administrative powers.

¹³ Section 6. Any licence taken out in a name other than the moneylender's true name shall be void.

¹⁴ Section 9. However, such a refusal may be appealed against to the Minister but the decision of the Minister shall be final.

¹⁵ Section 16.

¹⁶ Section 17.

¹⁷ Section 22. However in practice it is not uncommon to find moneylenders charging a rate of 10 percent per month or more.

¹⁸ Section 24. See also Table 4, Second Schedule to the Act.

¹⁹ Section 28.

But the deficiencies are that a majority of the borrowers are not aware of the provisions of the Act. Borrowers often are at the mercy of the unscrupulous loan sharks and because of their need, they succumb to any terms imposed upon them by the moneylenders, one of which is excessive interest inspite of the strict provision governing the imposition of interest.²⁰

Although the Act prohibits the signing of blank forms, many borrowers are intimidated by their distressing situation and in fact do sign such blank documents which allows the lender to arbitrarily fill in an excessive amount.

The Act is also concerned with far too many technicalities. Minor infringements of the Act may result in the loans becoming unrecoverable which does not augur well for the moneylender. The regulation of any transaction should ensure protection both for the lender as well as the borrower and neither should be enriched at the expense of the other.

In Wong Yoon Chai v Lee Ah Chin²¹ the appellant had applied for foreclosure of charged land arising from a moneylending transaction. The application was dismissed. The appellant then claimed for restitution which was also dismissed.²² On appeal to the Federal Court it was held that the appellants had been aware of the fact that the respondent had breached the Moneylenders Ordinance and there could not be an order for restitution.²³

²⁰ See newspaper report "The Malay Mail" 4 August 1993 where loan sharks were operating with schoolchildren as their clients.

²¹ [1981] 1 MLJ 219.

²² The appellant claimed for restitution by relying on Section 66 of the Contracts Act 1950 which is as follows:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it".

²³ Menaka v Lum Kum Chum [1977] 1 MLJ 91 was referred to but not applied. The court stated that the decision in Menaka set out the principle that it is a matter for the court to determine in each case whether or not the parties to the transaction were aware of any illegality at the time the transaction was made. Further, a point which the court could consider was whether the transaction was made in good faith. In Wong Yoon Chai v Lee Ah Chin the appellant failed to discharge the burden that he was unaware that provisions of the Moneylenders Ordinance had been breached since he had been a licensed moneylender for a period of years.

B. The Pawnbrokers Act 1972 (Act 81) Laws of Malaysia ("the Act")²⁴

Pawnbroking is a transaction where the pawnbroker²⁵ provides easy and quick credit by giving advances of cash to persons who pledge goods and valuables as security for the loan.²⁶ Normally the pledges would be gold items or pieces of jewellery which would serve as collateral until the pawner redeems it or the goods are forfeited.

Pawnbroking is an attractive business largely because of the ready cash available and the informality of the transaction. Pawnbrokers are the "poor man's bankers" and they are very much in demand despite the high rate of interest charged for the loan advances²⁷ as well as the malpractices they are subjected to by the pawnbrokers.

The consumer is afforded protection under the Act in the following areas:²⁸

- All articles pawned shall be entered in a register and the pawner given a pawn-ticket. The register should contain details as to the transaction and the pawn-ticket given to the consumer is also subject to be filled with detailed

²⁴ The Act is also subject to the provisions contained in the Pawnbrokers (Amendment) Regulations 1972 - P.U.(A) 218/73, Regulations 1982 - P.U.(A) 84/82 and Regulations 1983 - P.U.(A) 527 (hereinafter referred to as the 1972, 1982 and 1983 Regulations respectively).

²⁵ "Pawnbroker" includes every person who carries on the business of taking articles in pawn - Section 2. However Section 3 provides for persons who may be deemed pawnbrokers. Any person who takes an article as security for a loan not exceeding five thousand dollars shall be deemed to be carrying on the business of pawnbroking and shall be governed by the provisions of the Act.

²⁶ The Act does not apply to loans over \$5000 and also to loans between \$1000 and \$5000 where the interest rate is less than 10% per annum or less - Section 3(2).

²⁷ Regulation 12 of the 1982 Regulations provides that the rate of profit shall be interest at two per cent per month or part thereof. This would amount to a figure of 24 per cent per annum which is a high rate.

²⁸ See Rachagan Sothi S, op.cit. p. 88.

information.²⁹

- provision for calculation of interest rates and a fixed maximum that can be charged.³⁰
- provisions governing redemption of articles within six months or such longer period as may be allowed.³¹
- sale of forfeited items must be sale by auction conducted by a licensed auctioneer. The sale must be announced and both the pawnbroker and pawner are allowed to buy the articles sold.³²

(a) Malpractices

(i) Interest rate

In spite of the provisions of the Act that the rate of interest should be 2 percent per month, only 78.8% of the customers were charged this amount which showed that not all pawnbrokers

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Regulation 5(1) - 1972 Regulations provides that the following shall be entered in the register: serial number for the article pawned; date of pawning; detailed description of article pawned; amount of loan made; interest and other profit charged; time within which the article may be redeemed; name, age, sex, nationality, national registration card number and address of the pawner or owner if the pawner is not the owner; date on which the article is redeemed; particulars of person who redeems and the date and serial number of the receipt.

Regulation 6(1) - 1982 Regulations sets out the particulars to be stated on a pawn-ticket. The name, style and address of the licensee (pawnbroker); detailed description of the article; serial number as recorded in register; amount of loan; rates of interest; time within which it is to be redeemed and other particulars similar to that entered in the register.

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Regulation 12 of the 1982 Regulations.

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Section 18. Upon producing the pawn-ticket and paying the interest sum, the period for redemption may be extended by a further period of not less than three months - Section 19.

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Section 23 and Regulation 7A of the 1982 Regulations provide for procedure governing sale by auction.

adhered to the regulation governing interest payment.³³

(ii) Undervaluation of articles

The Act does not lay down any criteria for appraising the value of the articles pawned and thereby articles may be grossly undervalued by an unscrupulous pawnbroker.

(iii) Damage and loss to articles

Articles pawned and redeemed have been reported to be damaged or tampered with. Chains were shorter or lighter. There was an amendment to the 1972 Regulations by the 1982 Regulations where a detailed description of the item pawned was required to be in the pawn-ticket. However, by the 1983 Regulations, the requirement for details of the article was removed. It is in the interest of the consumer that the amendment of 1982 be reinstated.

(iv) Inadequate compensation for articles lost or damaged

If the item were lost or damaged by fire, the owner of the pawned article could only obtain one-quarter more than the amount of the loan thereon.³⁴ This is unfair to the borrower because in the first place, there is no criteria for assessing the value of the pledge. This may lead to a gross undervaluation and the loan would reflect this undervalued amount. 25% more of this amount would not be adequate compensation.

There should be a provision allowing for 100% compensation of the article in case of loss or damage to the article. The actual value of the article should be stated in the register and the pawn-ticket. But the pawnbroker should be given a discretion to allow maybe a loan of up to 70% or 80% of the actual value.

The above are some of the disadvantages to the consumer who relies on the pawnbroker as a means of obtaining ready cash.

³³ See Rugayah Mohamed, "Weaknesses in the Pawnbroking Legislation and Malpractices That Accrue", paper presented at the Seminar "Consumer Credit/Credit for the Poor", 1989.

³⁴ Section 22(3).

C. Hire-purchase

Hire-purchase transactions in Malaysia are governed by the Hire Purchase Act 1967 (Revised 1978) ("the Act").³⁵ A hire-purchase agreement is an agreement for the hire of goods with an option to purchase. This agreement is normally for all purchases made on an instalment basis.

Hire-purchase involves an element of hire and sale. It is the purchase of goods involving a payment of an initial amount followed by regular periodic instalments, normally monthly. Usually the property in the goods remained in the owner until all the instalments were fully paid. It was an implied condition of the hire-purchase agreement that the owner of the goods shall have a right to sell the goods at the time when the property is to pass.³⁶ The instalments were for a fixed period and could cover any period from a few months upto 6 years.³⁷

³⁵ The Act came into force on 11th April 1968. Transactions entered into before this date would not be governed by the Act and would be governed by common law principles. Significant changes to the 1967 Act were made by the Hire Purchase (Amendment) Act 1992 (HP(A)A 1992). For a detailed discussion on the amendments, see P. Balan & Nik Ramlah Mahmood in "The Hire-Purchase (Amendment) Act 1992", [1991] Journal of Malaysian and Comparative Law, Vol. 18 Parts 1 & 2, p. 37.

³⁶ Section 7(1)(b). In Ahmad Ismail v Malayan Motor Co. & Anor [1973] 1 MLJ 117, the subject matter of the hire-purchase agreement, a car, was detained by the police on suspicion of being stolen. The plaintiff terminated the agreement and sued the defendant for damages. The plaintiff was unsuccessful at first instance and appealed. One of the grounds of appeal was that the defendant-owner was in breach of the statutory provision relating to the implied condition as to title. The High Court dismissed the plaintiff's appeal on the ground

³⁷ Under the Government loan scheme in Malaysia, a civil servant may take upto 6 years maximum to repay a car-loan advanced to him. This is an aspect of hire-purchase in Malaysia where civil servants are eligible to obtain loans from the employer - Government at very low interest rates.

(a) Definitions

Goods subject to the HP Act are those mentioned in the First Schedule (Section 1):³⁸

1. All consumer goods
2. Motor vehicles, namely –
 - (a) invalid carriages
 - (b) motor cycles
 - (c) motor cars including taxi cabs and hire cars;
 - (d) goods vehicles (maximum permissible laden weight does not exceed 2540 kilograms)
 - (e) buses, including stage buses.

(i) "Consumer goods"

Firstly, the definition of "consumer goods" appears to restrict the types of goods which come under the protection of the Act. "Consumer goods" is defined in section 2 of the Act to mean goods purchased for personal, family or household purposes. It naturally follows that only goods purchased for personal, family or household purposes would enjoy the protection under the Act.

Goods purchased by a consumer for any purpose other than that stated above would not be covered by the Act. What of the retail goods trader who buys an expensive calculator to assist in trading? It would not be for personal, family or household purpose and the trader would not enjoy protection under the Act. Goods which do not qualify under the categories in the First Schedule would not be governed by the Act and the consumer who enters into an agreement to purchase these goods on an instalment basis would be outside the terms of the Act.

³⁸

The First Schedule to the 1967 Act listed only 4 categories of goods which were under the purview of the Act: (i) motor vehicles; (ii) radio, television sets, gramophones and tape recorders; (iii) refrigerators and deepfreezers; and (iv) sewing machines. An amendment by way of P.U.(A) 221/1980 added (v) washing machines; (vi) vacuum cleaners; (vii) airconditioners other than those used for industrial purposes; and (viii) electric or gas cookers or ovens. A further amendment in 1983 P.U.(A) 149/1983 added (ix) videotapes and cassette recorders; (x) typewriters; (xi) organs and pianos; (xii) photostat machines and copiers and (xiii) hi-fi systems.

(ii) "Hire-purchase agreement"

A "hire-purchase agreement" **includes** a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise) but does not include any agreement -

- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

(iii) "Includes"

Prima facie a statutory provision by which a given word "includes" certain meanings may be interpreted in one of two ways:

- illustrating the meaning of the word
- enlarging the meaning beyond that which it would ordinarily bear

and it therefore ought not to be read as providing an all-embracing definition.³⁹

Two possible interpretations arise from the use of the word "includes" in the definition of "hire-purchase agreement":

- (a) hire-purchase agreement could apply to other forms of transactions rather than the one stated in the definition section; or
- (b) it gives a comprehensive meaning to the preceding words i.e. that a hire-purchase agreement would only cover those mentioned in the section and would not include any agreements specifically excluded.

It is submitted that, subject to the wording of the section and the exclusions later on in the section, a hire-purchase agreement would not apply to any agreement outside the provisions of the Act. This is of concern because the Act was designed primarily to give protection for the

³⁹

See R M Goode, *op.cit.*, p.105.

consumer.⁴⁰

(iv) "Goods"

This is defined to include any replacements or renewals by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of hiring.

(b) Protection under the Act

Goods not covered under the First Schedule would normally be outside the protection afforded by the Act.⁴¹ For those goods under the Act protection is as follows:

⁴⁰ This was stated by the Minister of Commerce and Industry when moving the Hire Purchase Bill (Proceedings of the Dewan Rakyat, March 1967, p 5963): "... it is felt that hire purchase should be regulated, not so much as an instrument of economic management as in other countries, but mainly as a measure of protection for hire-purchasers against unscrupulous owners".

⁴¹ However, in Kesang Leasing Sdn Bhd v. Mohd Yusoff bin Ismail and Anor [1989] 2 CLJ 1216, the High Court held that where hire-purchase agreements were made in respect of goods not specified in the First Schedule, the parties could by mutual agreement agree to be bound by the provisions of the Act.

The defendant purchased a computer (which was not then included in the First Schedule) from the plaintiff-owner. Under the terms of the agreement both parties agreed to be bound by the provisions of the 1967 Act. The defendant defaulted in payments and the plaintiff repossessed the computer and sold it to a third party. The plaintiff then sued for the outstanding balance. It was held by the Magistrate that the plaintiff could not invoke the provisions of the Act because the goods were outside the ambit of those under the First Schedule. On appeal the High Court allowed the appeal stressing on the parties freedom to contract. The parties were free to contract outside the provisions of the contract or they could agree to be bound by the provisions.

(i) Right to be notified before making a purchase

Section 4 gives a right to the purchaser to be served with a notice containing particulars set out in Part I of the Second Schedule to the Act.⁴² This Second Schedule notice gives the purchaser a breakdown of the transaction i.e. the cash price and the difference between the cash price and the hire-purchase price. A purchaser when served with such a notice would be able to question the wisdom of entering into such a transaction. He may decide not to proceed with the hire-purchase transaction if he felt that the hire-purchase price was far too high compared with the cash price and therefore prudent to wait a while longer and make a cash purchase.

However the section does not provide **when** the notice should be served.⁴³ The section would better serve its function if a specific time limit were to be given. A purchaser contemplating a hire-purchase transaction ought to be served with a Second Schedule Notice and given a period of 2 or 3 days before entering into the agreement.⁴⁴

⁴² See APPENDIX "A".

⁴³ The way the section is worded presently does not allow the purchaser any breathing space. Since there is no mandatory time limit between the serving of the Second Schedule Notice and the signing of the agreement, it would be possible for the owner of the goods to plonk a set of both the Second Schedule Notice and the hire-purchase agreement simultaneously and require the hirer to sign both at once.

However, a close reading of section 4(3) might mean that the Second Schedule Notice ought to be served well in advance of the signing of the agreement.

"Any person who has been served with the written statement shall not be under any obligation to enter into any hire-purchase agreement and no payment or other consideration shall be required from him in respect of the preparation or service of such statement or statements, as the case may be."

⁴⁴ The suggested period would give him time to reflect on the purchase, to work out his finances and finally upon calculation and contemplation, he might decide to wait a little longer before making the purchase. The wisdom of such contemplation might avert an otherwise imminent financial disaster with adverse consequences. The time period of 2-3 days is suggested because the price stated would be valid for a period of 7 days.

This section is beneficial to the consumer because it gives him a right to be told of the financial commitment that the hire-purchase transaction involves as well as the difference in price between a cash purchase and an instalment purchase.

(c) Form and content of hire-purchase agreement

Every hire-purchase agreement must comply with the following requirements or it will be void and the owner who enters into an agreement that does not comply with stipulated requirements shall be guilty of an offence under the Act:⁴⁵

- it must be in writing
- it must be signed by or on behalf of all parties to the agreement
- no owner to require a hirer to sign the agreement until it has been duly completed⁴⁶
- it must specify the date on which hiring shall be deemed to have commenced and give details of the number and amount of instalments, time due for payment, description of goods, address where goods are to be kept, cash price of goods and deposit paid, other expenses to be added to the purchase price, insurance for goods and term charges: and finally the total payable under the agreement
- it shall not contain any particulars different from the particulars stated in a Second Schedule Notice
- there should be a separate agreement for individual goods purchased under the Act.

To a certain extent, having the form and content of a hire-purchase agreement regulated by legislative provisions would afford protection to the consumer. A trader might be hesitant to modify the agreement to his advantage because of the sanctions provided for in the Act.

⁴⁵ Sections 4A-4D.

⁴⁶ In Ming Lian Corporation v Haji Nordin [1974] 1 MLJ 52, the court was faced with the question of whether a hire-purchase agreement signed in blank was valid before the Act came into force. It was held that the parties were bound by such an agreement unless fraud or misrepresentation was proved.

The present section 4B(3) makes an unsigned hire-purchase agreement or one that was signed before being duly completed, void and an owner who enters into an agreement in contravention of the conditions stated, shall notwithstanding that the agreement is void, be guilty of an offence under the Act.

(d) Implied warranties and conditions

In every hire-purchase agreement the hirer is entitled to the following implied warranties and conditions:⁴⁷

- (i) an implied warranty that the hirer shall have and enjoy quiet possession of the goods
- (ii) an implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass⁴⁸

⁴⁷ Section 7.

⁴⁸ In Soon Teck Finance (M) Bhd v Public Finance Bhd, the plaintiff entered into a hire-purchase agreement with C for the purchase of a vehicle. The vehicle was registered under the name of C but with an indorsement of "ownership claimed" by the plaintiff. C did not pay the instalments and the plaintiff terminated the agreement.

In the course of repossession proceedings, it was discovered that the vehicle registration number had been changed and the indorsement cancelled and replaced by the defendant company. The plaintiff sought a declaration that the vehicle was the property of the plaintiff.

It was held that the plaintiff had not discharged the burden of showing that he was the rightful owner and upon the evidence adduced by the defendant, i.e. the registration card, the defendant company was a purchaser in good faith and without any notice of any defect in the seller's title.

It must be noted that the following issues were not discussed:

- reasons for the change of registration number of the vehicle and the possibility of a fraudulent purpose
- cancellation of the indorsement whereby the plaintiff had given notice of his ownership and the substitution of the defendant company (without the consent of the first claimant - normal business practice would require the consent of the first encumbrancer to consent to his lien or claim being replaced by a subsequent encumbrancer).

The only issue addressed by the court was - who had a

- (iii) an implied warranty that the goods shall be free from any encumbrance or charge in favour of any third party at the time property is to pass
- (iv) an implied condition that the goods shall be of merchantable quality⁴⁹ subject to certain exceptions namely:
 - where the hirer had examined the goods or a sample which examination⁵⁰ ought to have revealed the defects or
 - where the goods were second-hand and the agreement stated that fact as well as expressly negating all conditions and warranties as to quality – and the owner proves that the hirer had acknowledged in writing that the statement was brought to his notice.
- (v) if the goods were to be used for a particular purpose, an implied condition that the goods shall be reasonably fit for the purpose.

(e) Notification prior to repossession

Section 16 sets out the requirements that need to be satisfied before goods are repossessed from a hirer. These requirements restrict the power of the owner to repossess and repossession may only be carried out when there has been:

better title to the vehicle.

⁴⁹ Section 7(2).

⁵⁰ The issue relating to "examination of the goods" was discussed in Lau Hee Teah v Hargill Engineering Sdn Bhd & Anor [1980] 1 MLJ 145. A loader, subject matter of a hire-purchase agreement was repossessed after the hirer had defaulted in payments. The appellant-hirer instituted proceedings for breach of implied warranties in relation to merchantable quality and fitness for purpose. Evidence was adduced to prove that the loader was shown to the appellant before the agreement was signed. The loader's engine was also started. It was held that the examination was not sufficient to reveal the alleged defects in the loader and the decision was affirmed by the Federal Court.

- two successive defaults of payments or
- a default in respect of the last payment
- and the owner has served on the hirer a Fourth Schedule Notice⁵¹
- and the period fixed by the notice had expired, which shall not be less than twenty-one days after the service of the notice.

Where a hirer is deceased, there must be four successive defaults of payments before the goods may be repossessed. Section 16(1A) presumes that the deceased's estate would be administered within a period of four months - assuming that the instalments are monthly payments.

There is no provision for late administration of deceased's estate due to administrative or similar delays. In the absence of a provision for unforeseen delays, this subsection may prove beneficial for an owner of the goods but not the beneficiaries of a deceased person. Beneficiaries would be advised to keep up with the payments till the estate had been administered.

(f) Action by owner after repossession

(i) Consent of hirer before disposal

Once repossessed the owner is not at liberty to dispose of the goods:

- without written consent of the hirer (if the sale takes place within twenty-one days of repossession) or
- until after the expiration of twenty-one days after the date of service of a Fifth Schedule Notice⁵² or
- if a Section 18 Notice⁵³ had been given, until the time for payment or tender

⁵¹ See APPENDIX "B".

⁵² See APPENDIX "C". The Fifth Schedule Notice gives an opportunity to the hirer to request for a redelivery of the repossessed goods by paying up the outstanding balance and reinstating the agreement within 21 days. In the alternative, the hirer could give an intention to finalise the agreement and pay the balance due together with costs of repossession - also within 21 days.

⁵³ Section 18(1)(a) - Where the owner takes possession of any goods under Section 16

(a) the hirer may within twenty-one days after the service on him of the notice referred to in section 16(3) by giving to the owner a notice in writing signed by the hirer or his agent

pursuant to that notice had expired (whichever is the later).

(ii) Hirer to be given notification of subsequent sale of goods

When the owner decides to sell the goods by public auction or otherwise, the hirer must be served with a notice of such a sale and given an option to purchase the goods at the price at which the owner intends to sell the goods.⁵⁴

(iii) Power of hirer to regain possession of repossessed goods

Where the hirer pays up the sum in default within the stipulated time prescribed or remedies any breach of the agreement and pays the costs incidental to the repossession, the owner **shall** return the goods to the hirer and the hirer holds them pursuant to the hire-purchase agreement as if the breach had not occurred and the repossession had not taken place.⁵⁵

The above provisions governing repossession are to the benefit of the consumer because there must be a specific default before repossession proceedings are commenced. Furthermore, the goods are not immediately disposed of, thereby giving the purchaser an opportunity of reinstating the agreement.

(g) Terms charges (interest)

Section 30 makes a hire-purchase agreement void if it is entered into in contravention of the provisions set out regarding calculation of terms charges. The terms charges shall not when calculated as a rate per centum per annum in accordance with the formula in the Sixth Schedule exceed a rate per annum prescribed by any regulations made under the Act.⁵⁶

(i) require the owner to redeliver to or to the order of the hirer (...) the goods that have been repossessed; or

(ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first mentioned notice.

⁵⁴ Section 18(4).

⁵⁵ See Section 19(1).

⁵⁶ In the Sixth Schedule, the terms charges shall be calculated in accordance with the formula:

$$R = 100 \times C$$

$$T \times P$$

Although there are other provisions for the benefit of the hirer⁵⁷, those stated above are the normal areas where problems occur in hire-purchase transactions.

where R represents the terms charges calculated as a rate per centum per annum

C represents the amount of terms charges expressed in ringgit and fractions of ringgit

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with:

- (i) one week where the instalments are payable under the agreement at regular weekly intervals;
- (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (iii) one month where the instalments are payable under the agreement at regular monthly intervals

expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with freight, if any; and vehicle registration fees, if any; and insurance, if any, expressed in ringgit and sen.

⁵⁷ Some of the relevant sections are as follows:

Section 14 provides for early completion of agreement; Section 15 gives the hirer the right to determine the hiring; Section 26 provides that the owner shall insure the goods in the name of the hirer; Section 27 lays down the powers of the court in relation to insurance contracts; Section 30 imposes limitations on terms charges; Section 33 allows the court to re-open certain hire-purchase transactions and Section 46 is a general penal provision in that where no other penalty is provided for under the provisions of the Act, this section may be invoked where any offence had been committed under the Act.

(h) Malpractices

Although the Act provides safeguards for the consumer, there are always malpractices whereby the hirer is shortchanged. To name a few:⁵⁸

- a hirer is not always given the Second Schedule Notice; they are usually rushed into signing the agreement without adequate time given to them to assess their financial obligations
- cash price is usually the list price – it is very seldom the case, or never, where the owner calculates term interest on the actual cash discounted price
- hidden costs such as agreement fees, service fees, postage costs are added on to the price before term charges are calculated so that the hirer actually pays interest on all the sums
- charging of "football money" (10% of the sum loaned) or "tea money" payable in addition to the hire-purchase price
- signing of blank hire-purchase is common especially in the case of the ignorant hirer
- hirers of vehicles do not have a choice to pick their insurers and may end up paying a higher sum than they would if they had been given the choice. This could be due to the commission paid by the insurance companies to the hiring companies.
- unscrupulous dealers who act as intermediaries between the hirer and the finance companies may pocket the monthly instalments thereby causing the goods to be repossessed for non-payment
- although the Act provides that repossession must only be done with the service of a Fourth Schedule notice being served, it is often the case that repossession is resorted to without adequate notice being given and the hirer has no opportunity to settle the arrears and avoid repossession
- repossession may be undertaken using thugs and bouncers and these people sometimes take the goods without the knowledge of the hirers⁵⁹
- high charging of repossession fees – the law provides for the charging of repossession fees but does not state how it is to be calculated. Owners take advantage of this oversight to charge exorbitant fees.

⁵⁸ See Rachagan Sothi S, Consumer Law Reform, p.99.

⁵⁹ Repossessors are required to identify themselves under the Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976.

D. Reform

From the preceding discussions, it is clear that although the Act contains provisions for the protection of the hirer/purchaser, these provisions only afford protection to those transactions which come under its purview.⁶⁰

The parties would otherwise be governed by normal contractual principles according to the Contracts Act 1950 (Revised 174) Malaysia. Where the terms of the contract do not contravene any of the provisions of the Contracts Act 1950, the courts may not be willing to interfere.⁶¹

Furthermore it may be noted that the Act has been the subject of a number of amendments, the most recent being the 1992 Amendment Act.⁶² In the light of the numerous amendments, perhaps the need for a more comprehensive piece of legislation is timely. But it is not piecemeal legislation that is advocated. It is timely for an all-encompassing act to cover all and every transaction entered into by a consumer. It should protect the consumer who purchases goods or services from a business man.

⁶⁰

In Anglo-American Corporation Ltd v Goodwood Sawmill Co [1966] 1 MLJ 263, a case decided before the Act came into operation, a hired cable was the subject matter of repossession. A clause in the agreement between the parties provided for immediate repossession in the case of default of any of the sums payable under the agreement. The defendant-hirer alleged wrongful termination of the agreement on the ground that no notice of termination had been given prior to the repossession. The judge held that a formal written notice was only necessary where there was an express stipulation to that effect in the agreement.

⁶¹

As per what Lord Nottingham observed in Maynard v Moseley (1676) 3 Swan 651 - "The Chancery mends no man's bargain".

⁶²

Since its inception in 1967, the Act has been amended several times. The first amendment was in 1968, the very year the Principal Act came into effect. Subsequent amendments were effected in 1969 and in 1976. The Principal Act was revised in 1978 incorporating all the amendments made to date. Substantial amendments were again effected in 1992. For a full discussion of the Act and the significance of the amendments effected, see Gan Ching Chuan and Nik Ramlah Mahmood, "Two Decades of the Law Relating to Sale of Goods, Hire Purchase and Equipment Leasing", Developments in Malaysian Law - Essays to Commemorate the Twentieth Anniversary of the Faculty of Law, University of Malaya, Pelanduk Publications, Kuala Lumpur, 1992.

PART TWO - CONSUMER CREDIT TRANSACTIONS NOT GOVERNED UNDER ANY PARTICULAR LEGISLATION

Having seen the specific legislation governing certain consumer credit transactions, it appears the legislation does not provide a blanket protection for the consumer. But the advantage of having these pieces of legislation is that some form of administrative measures are available to punish the offenders. Enough powers are given to regulating authorities in each of these acts to control the finance-givers from intimidating the borrower.⁶³

But there are still various malpractices and abuse as well as diverse measures devised by the crafty businessmen which have served to cement the proposition that a more comprehensive and consumer-protective legislation is required. Further, a number of purchases of goods and services do not come under any specific statute where the interest of the consumer is emphasised.

A. Retail revolving credit

Large shops operate a system whereby the customer agrees to pay so much a month (\$200) and at the same time the customer can buy goods on credit up to a certain value e.g. 10 or 12 times his monthly payments. If there is only one purchase made by the customer then it is no different from an ordinary credit sale. But usually the customer is allowed to top up his purchases so that each month, inspite of the monthly repayments, the credit amount remains unchanged.

B. Credit cards

In the credit card system, three parties are involved; the customer, the creditor (card company) and the seller. The transaction is simple – the buyer having decided what to purchase makes his purchase using his credit card. The seller is then reimbursed by the card company usually after one month and the seller is bound to give the card company a discount. The discount is the profit of the card company. Certain card companies operate on a 3 per cent discount on the total sale.⁶⁴

⁶³ Section 46, Hire Purchase Act 1967 (Revised 1978) which provides for a blanket penal provision for any offence committed under the Act. Section 5, Moneylenders Act 1951 (Revised 1989) provides for licensing of moneylenders. And provisions in the Pawnbrokers Regulations of 1972 provide for details of the pawned article shall be entered on the register.

⁶⁴ For example, a retailer who had sold his goods for a sum of RM100 would only receive RM97 from the card company. The card company however receives the full amount from

The legal nature of a credit card or charge card and the liabilities of the parties was considered in Re Charge Card Services Ltd.⁶⁵

In this case several garages which were members of the card company faced problems of payment when the card company became insolvent. The garages claimed payment from the card holders because they could not get any money from the card company. The argument was that the payment via the credit card was similar to payment by cheque and if the cheque had been dishonoured by the bank, the garage would be entitled to claim it from the customer.

The Court of Appeal held that payment by means of a cheque or credit card is not conditional but absolute. It was a complete payment by the card holder who was not liable to pay the garage if the card was not honoured. The retailer thus ran the risk that a card company may become insolvent.

The court also had the opportunity of looking at two underlying agreements; one between the card company and the card holder which regulated the basis on which credit could be obtained and was to be paid off and the other between the card company and the retailer where the retailer agreed to accept payment by means of the card and was to receive payment, less a discount, from the card company.

The court held, interpreting the agreement between the card company and card holder, that the company had the right to claim payment from the card holder irrespective of whether the card company had paid the garages.

What is clear from this judgment is that where there is no specific provision regulating a particular transaction, the court is bound by the contractual terms entered into by the parties. In this case, the decision appears unjust because the insolvent company had the right to claim from the card holder regardless of whether the card company had paid the retailers. Those card holders who had not yet paid the card company in respect of petrol purchased using their card remained liable to do so, but no card holder was liable to pay the garage for the petrol.

C. Bank Overdraft

Bank overdrafts are usually by agreement and the bank manager agrees to honour the cheques of the customer upto a pre-specified amount. Sometimes collateral is required but not always. Sometimes the banks rely on the long-standing relationship between the customer and the bank. Interest is payable on the overdrawn amount as well as bank charges.

the consumer. The RM3 is the profit of the card company.

⁶⁵[1988] 3 All E.R. 702.

PART THREE

CONCLUSION - NEED FOR REGULATION

A. Change in attitudes

It must be noted that at the time the Moneylenders Act 1951 was enacted, the objective was to discourage credit spending. It was an era where borrowing reflected poverty – when people who were in financial problems went to a moneylender. Socially it was not acceptable.

So was the pawnshop a "poor man's bank". It was effective in providing short-term loans – with a redemption period of 6 months. What the Act failed to realise was that a man's financial standing does not improve immediately and six months may not be sufficient for him to redeem the pledge together with interest and charges. But the provisions for extensions of the redemption period proved comforting.

Today, credit is a business transaction. The social stigma which attached to borrowers frequenting moneylenders and pawnbrokers is no longer in existence. Today no one bats an eyelid when people purchase on hire-purchase terms. Hire-purchase is becoming increasingly popular with a change in the attitude towards the transaction.

With the other two forms i.e. moneylending and pawnbroking, it was a necessity which prompted borrowers to frequent them. But not with hire-purchase transactions.

Hire-purchase was in use even before the Hire Purchase Act 1967 came into force. However there were certain negative aspects to the transaction which prompted the Government to intervene by way of legislation.⁶⁶

Credit card spending is also fast gaining popularity. Certain card companies allow membership on an annual income of RM8400.⁶⁷ There is no regulation on what individual card companies may stipulate as the bare minimum. This open-ended discretion by the card companies, while attracting the consumer to the easy credit, also lures him into making impulsive purchases.

⁶⁶ There was a need to prevent practices which were damaging to the economic interests of the consumers. Traders were becoming increasingly involved in activities which enticed customers into entering hire-purchase transactions which they could ill-afford.

⁶⁷ The normal ceiling imposed is an annual income of RM14,400.

B. Proposals for Reform⁶⁸

From the discussion of the consumer credit transactions currently under legislative provisions, it is evident that inspite of the legislations governing the transactions, the consumer is still shortchanged in many aspects. Where there is no legislation provided for the position is not any better.

There is a need for legislative action to resolve the two types of transactions in Parts One and Two. The transactions mentioned in Part Two may only be governed by the Contracts Act 1950.

The forthcoming legislation should either be a consolidation of such piecemeal legislations or a general act to afford protection for consumer credit transactions which would cover transactions not presently under the purview of any of the consumer credit legislations.

It should define and protect the consumer qua consumer in his daily transactions. It should protect the consumer in regulating transactions between suppliers and consumers and not confined to purely commercial transactions between suppliers. The new legislation should also provide remedies for suppliers who have been disadvantaged.

It should not be by way of piecemeal legislation dealing with specific problems or by sporadic amendments to existing statutes but a whole new approach geared towards consumer protection legislation.

C. Conclusion

Consumer credit legislation must;⁶⁹

- provide for the orderly growth of the industry;
- be equitable as between the providers of the different forms of credit;
- discourage reckless borrowing and lending;
- protect the legitimate interests of both lender and borrower;
- redress the bargaining inequality as between lender and borrower;
- regulate the remedies for default and protect the unfortunate and honest victims of default;

⁶⁸ The proposals for reform were suggested by Rachagan, Sothi S, in Consumer Law Reform, p. 173.

⁶⁹ Rachagan Sothi S, Consumer Law Reform, p. 73.

- must be clear and precise without any ambiguity or uncertainty arising from the provisions.⁷⁰

It should be aimed at providing legal provisions governing consumer contracts or agreements, whether in writing or oral, and to protect the consumers against the inequitable, abusive or unconscionable behaviour or practice normally resorted to by the corporations and bodies involved in either providing sale or loan credit.

Strict enforcement measures and penal provisions against defaulters or offenders must be provided for in the suggested legislation.

Adequate steps must be taken to disseminate information aimed at educating consumers about their rights and entitlements. This could be started with the very young adult – at school, tertiary education and for the working population, by regular coverage on the mass media.

Ensuring that all rights which belong to an individual are brought to his notice would be a step in the right direction towards achieving the goal of a worthwhile consumer credit regulation. Just as legal services and access play an important role in making the legal aid program a success in the UK, likewise in the regulation of consumer credit transactions, the consumer needs to be aware of his rights and privileges under the law.

The suggested piece of legislation should veer towards protection for the consumer and recognise the rights of the consumer accepted internationally:

- right to safety – to be protected against goods hazardous to health and life
- right to be informed – to be protected against fraudulent and misleading information especially in relation to advertising and labels on products
- right of choice – to be given a right to choose from a variety of goods and services at competitive prices and to be assured of satisfactory quality of goods, price and most important, after-sales service
- right of hearing – to have a right to bring an action – a real right in law to be heard. Further, the outcome of the hearing should be the focus of Government attention and policy considerations and not to be relegated to the shelf to gather

⁷⁰ For example, where the hire-purchase transactions only govern those goods specified in the First Schedule to the Hire Purchase Act 1967; the eight categories of moneylenders exempted from the Moneylenders Act 1981; and the uncertainty governing transactions of between RM1000 and RM5000 where the interest rate is no more than 10% per annum and loans over RM5000 in the Pawnbrokers Act 1972. It is uncertain as to what legislation the pawnbroker is subject to if the loan amounts do not comply with the sums stated above.

dust. Administrative organisations should strive to formulate policies based on the decisions with the main aim of recognising consumer rights in a growing economy and fast advancing technological improvements.

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FIRST SCHEDULE

HIRE-PURCHASE ACT 1967

(Section 1)

LIST OF GOODS

1. All consumer goods:
2. Motor vehicles, namely-
 - (a) Invalid carriages:
 - (b) Motor Cycles:
 - (c) Motor Cars including taxi cabs and hire cars:
 - (d) Goods Vehicles (where the maximum permissible laden weight does not exceed 2540 kilograms):
 - (e) Buses, including stage buses.

APPENDIX 'A'

SECOND SCHEDULE

Hire-Purchase Act 1967

PART I

(Section 4(1)(a) and 4(1)(b)(i))

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER THE
PROPOSED HIRE-PURCHASE AGREEMENT

This document contains a short description of the goods comprised in the hire-purchase agreement and a summary of your financial obligations under the proposed hire-purchase agreement.

Particulars of goods

Short description of goods:.....

If motor vehicle, state registration number:.....

State whether new or second-hand:.....

Address where goods will be kept:.....

Particulars Relating To Your Financial Obligations

Cash price of goods" *\$.....

Amount to be paid before
entering into the hire-purchase
agreement (hereinafter referred
to as "deposit") \$.....

Cash price less deposit \$..... \$.....

Freight charges, if any \$.....

Vehicle registration fee, if any \$.....

Insurance:

(a) For motor vehicle, insurance in respect of
the first year only \$.....(b) For goods other than motor vehicles, in
respect of the duration of the hire-purchase
agreement \$.....

Terms charges:

(a) rate per annum.....
(b) total amount of terms charges \$.....

Balance originally payable under the agreement \$.....

Annual Percentage Rate.....

Balance originally payable under the
agreement, inclusive of deposit, referred
to in the agreement as the "hire-purchase price"

Difference between cash price of goods
and the total amount you will have to pay \$.....

Particulars Relating To Payment

Duration of payment of instalments in
number of months or years

Number of instalments

Amount of each instalment

This document is issued by or on behalf of.....

at

on this day of

19..... pursuant to section **4(1)(a)/4(1)(b)(i) of
the Hire-Purchase Act 1967.

This document is given free of charge without any
obligation to enter into a hire-purchase agreement.

I/We NRIC No.

..... of

..... hereby acknowledge
receipt of this document.

Signature

Date

* Price stated will be valid for a period of 7 days.

** Strike out whichever inapplicable.

Discrepancy between cash price of goods
and the total amount you will have to pay
Particulars relating to payment
Duration of payment of instalments in
number of months and quarters
Number of instalments
Amount of each instalment
This instalment is issued by or on behalf of
on this
pursuant to section 44(1)(b) of the
the Hire Purchase Act 1967
This document is given free of charge without any
obligation to enter into a hire purchase agreement
I have
in order to obtain the goods
receipt of this document and the goods
signature
date
The period stated will be valid for a period of 3 days
and after that period the document will be void

APPENDICES 'B' & 'C'

- 101 -

FOURTH SCHEDULE

Hire-Purchase Act, 1967

(Section 16)

NOTICE OF INTENTION TO RE-POSSESS

Take notice that the
 owner of *
 hired by you under an agreement dated the
 day of 19....., intends to retake
 possession of the goods after the expiration of
 days from the service of this notice unless the arrears of
 instalments including arrears of interest due on overdue
 instalments which now amount to \$..... are paid to
 at
 on or before 19.....

Total amount payable \$.....

Amount paid or provided by hirer to/
/...../19.... \$.....

Arrears under agreement to/...../
 19... .. \$.....

* Insert description of goods.

And further take notice that if the goods are
 returned to the owner within twenty-one days after the
 service on you of this notice, you will not be liable to
 pay the following, namely:

- (i) cost of repossession;
- (ii) cost incidental to taking possession; and
- (iii) cost of storage.

FIFTH SCHEDULE

HIRE PURCHASE ACT, 1967

NOTICE TO HIRERS UNDER SECTION 16

Now that the goods you hired have been re-possessed you will be entitled to get them back-

- (a) if, within twenty-one days you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within twenty-one days after giving the notice, you reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

The owner's estimate of the amount you must pay to reinstate the agreement is-

Arrears of instalments	...	\$.....
Arrears of interest due on overdue instalments	...	\$.....
Cost of storage, repair or maintenance	...	\$.....
Cost of re-possession	...	\$.....
Cost of redelivery	...	\$.....
Total

(b) if within twenty-one days, you give notice of intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

The owner's estimate of the amount required to finalise the agreement is-

Total amount payable under the agreement	\$...
Less deposit and instalments paid	... \$...
Balance due under agreement	... \$...
Less statutory rebates	... \$...
Add arrears of interests due on overdue instalments	... \$...
Add costs of re-possession	... \$...
Storage, repair or maintenance	... \$...
Total	...

If you do not reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The owner's estimate of the value of
the goods re-possessed is \$.....

*On the basis of that estimates you are
entitled to a refund of \$.....

you are liable to pay the owner \$.....

NOTE - You may give a written notice to the owner
requiring the owner to sell the goods to any cash
buyer you can introduce who is willing to pay the
owner's estimate of the value, i.e.,+

DO NOT DELAY

Action to enforce your rights should be taken at
once. You will lose your rights twenty-one days after
the service or posting of this notice if you do not
take action.

NOTE - Where this notice is sent to a guarantor
it shall be endorsed as follows:

This notice is sent to you as guarantor of.

As guarantor you have certain rights under the
Hire-Purchase Act, 1967, and you are advised to seek
advice at once.

* Strike out whichever inapplicable.

+ Insert owner's estimate of value.